

**Letter of Findings Number: 02-20110188P****Corporate Income Tax****For the Periods Ending September 30, 2008, and December 31, 2009**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES****I. Tax Administration—Due Date for Filing.**

**Authority:** IC § 6-3-4-3.

Taxpayer argues that the due date for filing was extended because of federal law regarding consolidated corporate income tax returns.

**II. Tax Administration—Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

**III. Tax Administration—Negligence/Late Payment Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a late payment penalty on its tax liability.

**IV. Tax Administration—Estimated Tax Penalty.**

**Authority:** IC § 6-3-2-2.8; IC § 6-3-4-4.1; IC § 6-8.1-10-2.1; IC § 27-1-18-2; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a penalty for failure to make sufficient estimated tax payments.

**STATEMENT OF FACTS**

Taxpayer is a corporation domiciled in Indiana and engaged in the insurance business. From January 1, 2008, to September 30, 2008, Taxpayer was a stand-alone corporation. On October 1, 2008, Taxpayer was acquired by an unrelated corporation. Taxpayer became part of the unrelated corporation's consolidated corporate income tax return.

On October 15, 2009, Taxpayer filed a corporate income tax return for the period from January 1, 2008, to September 30, 2008. On that return, Taxpayer reported an \$84,000 tax liability. On April 15, 2009, Taxpayer remitted \$90,000 to the Indiana Department of Revenue ("Department"). The Department determined that the return was filed late and assessed penalty and interest for this portion of 2008.

Taxpayer also filed a short-year tax return for the period from October 1, 2008, to December 31, 2008. Taxpayer remitted \$25,000 in tax on December 15, 2008, and \$15,000 on April 15, 2009. Taxpayer filed a tax return listing a \$26,100 liability. Taxpayer carried forward \$13,800 (\$40,000 payments minus \$26,100 liability minus \$100 estimated tax penalty) to 2009.

For 2009, Taxpayer did not remit any estimated payments beyond the \$13,800 carryforward from 2008. On April 15, 2010, Taxpayer remitted \$300,000. Taxpayer reported a liability of \$342,500 and remitted a further \$21,800 on October 15, 2010. Taxpayer was assessed a \$2,900 late payment penalty and a \$17,100 penalty for failure to make sufficient estimated tax payments. Taxpayer protested the penalty and interest imposition for 2008, along with the two penalty impositions for 2009, the Department conducted an administrative hearing, and this Letter of Findings results.

**I. Tax Administration—Due Date for Filing.****DISCUSSION**

Taxpayer protests that it filed its Indiana corporate income tax return in a timely manner. In particular, Taxpayer notes that federal consolidated corporate income tax regulations allowed for the filing of Taxpayer's 2008 short-period federal income tax return on March 16, 2009.

IC § 6-3-4-3 provides that "Returns required to be made pursuant to section 1 of this chapter shall be filed with the department on or before the 15th day of the fourth month following the close of the taxable year." Taxpayer's short tax year ended on the date of its acquisition—September 30, 2008. The return for that taxable year (excluding extensions) was due for Indiana on the fifteenth day of the fourth month following the close of the taxable year—in this case, January 15, 2009. Therefore, the return was not timely filed under Indiana law, notwithstanding the provisions of federal law.

**FINDING**

Taxpayer's protest is respectfully denied - the due date for Taxpayer's return was January 15, 2009.

**II. Tax Administration—Interest.****DISCUSSION**

Taxpayer protests the imposition of interest on its payment. Under IC § 6-8.1-10-1(b), interest was due on the unpaid tax liability if the liability was paid after the due date for the return. Per the discussion above, Taxpayer's due date for the return was January 15, 2009. Taxpayer did not remit the tax until April 15, 2009. Therefore, the

payment of tax was late and interest was due. Under IC § 6-8.1-10-1(e), interest cannot be waived.

#### FINDING

Taxpayer's protest is respectfully denied.

### III. Tax Administration–Negligence/Late Payment Penalty.

#### DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to file its return and remit its tax in a timely manner.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

For 2008, and notwithstanding the determination that Taxpayer's return was filed after the due date, Taxpayer has provided sufficient information to conclude that it acted reasonably based on the due date of its federal returns. Based on its actions for the 2008 tax year, Taxpayer acted with reasonable care with its Indiana return filing and payment. Thus, Taxpayer's penalty for late payment of tax should be waived for 2008.

For 2009, Taxpayer has provided sufficient information to conclude that it reasonably thought that it had paid its entire tax liability for the years in question. Thus, Taxpayer's penalty for late payment of tax should be waived for 2009.

#### FINDING

Taxpayer's protest is sustained.

### IV. Tax Administration–Estimated Tax Penalty.

#### DISCUSSION

Taxpayer protests the imposition of the penalty for Taxpayer's failure to remit sufficient quarterly estimated taxes.

IC § 6-3-4-4.1 provides in relevant part:

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) the annualized income installment calculated under subsection (c); or

(2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

Taxpayer asserts that it was eligible to elect to be treated as subject to Indiana gross premiums tax pursuant to IC § 27-1-18-2(b) for 2009 but that it did not make such an election. The effect of the election would have been to exempt Taxpayer from Indiana adjusted gross income tax pursuant to IC § 6-3-2-2.8(4).

IC § 27-1-18-2(b) provides that a domestic insurance company's election to be subject to the Indiana gross premiums tax must be made by November 30 of the previous year. Thus, an election for 2009 was required to be made on or before November 30, 2008. Even if the failure to make the election was inadvertent, Taxpayer knew of its failure to make an election prior to the beginning of the 2009 tax year.

The first estimated payment for the 2009 tax year was due April 20, 2009, almost five months after Taxpayer knew (or should have known) that it was subject to Indiana adjusted gross income tax. The first insufficient estimated quarterly tax payment was the payment due on September 20, 2009, almost ten months after Taxpayer knew (or should have known) that it was subject to Indiana adjusted gross income tax. Even assuming that the reasonable cause provisions of IC § 6-8.1-10-2.1(d) and [45 IAC 15-11-2](#) were applicable, Taxpayer was aware of its 2008 tax liability—its baseline for 2009 estimated tax payments—and should have been aware that it was subject to Indiana adjusted gross income tax for the 2009 tax year. Taxpayer has not otherwise challenged the calculation of the penalty. Thus, based on the totality of the circumstances, Taxpayer's protest on this issue is denied.

#### **FINDING**

Taxpayer's protest is respectfully denied.

#### **SUMMARY**

Taxpayer's protest of the due date for the short-period 2008 return is denied.

Taxpayer's protest of interest for the period ending September 30, 2008, is denied.

Taxpayer's protest of the negligence/late payment penalties for 2008 and 2009 is sustained.

Taxpayer's protest of the estimated tax penalty for 2009 is denied.

*Posted: 01/25/2012 by Legislative Services Agency*

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